REMARKS

Reconsideration of the present application in light of the amendments and remarks set forth here is respectfully requested. Claims 1, 5, and 7 stand currently amended, claim 8 remains withdrawn. Support for the amendments may be found throughout the instant specification and claims as originally filed, specifically at lines 6-11, page 21 of the instant specification. No new matter has been added to the application by way of this amendment.

Rejection under 35 U.S.C. § 112, Second Paragraph

Claims 5 and 7 stand rejected under 35 U.S.C. §112, second paragraph as allegedly being indefinite in light of the query of whether "nystatin" is actually a trademark. Applicants thank the Examiner for noting this oversight, and submit that "nystatin" is no longer a trademark, but instead refers to a generic antifungal agent. In support of this finding, Applicants submit a copy of the trademark search from the U.S. Patent and Trademark Office website conducted 11-20-2006. Applicants have amended the claims to reflect this finding. Accordingly, Applicants respectfully submit this rejection has been overcome and request the rejection be withdrawn.

Rejection under 35 U.S.C. § 103(a)

Claims 1, 2, 5 and 7 stand rejected under 35 U.S.C. §103(a) as allegedly being obvious in light of Farmer (U.S. Pat. No. 6,645,506) in view of Jaffe (U.S. Pat. No. 3,853,454). Specifically, the Action concedes that Farmer does not explicitly teach a composition comprising ascorbate or ascorbic acid but allegedly does disclose compositions containing a laundry list of potential ingredients, including antioxidants. The Action alleges that Jaffe teaches that ascorbic acid was a well-known antioxidant at the time of the invention of Farmer, and further alleges that it would have been obvious for one of skill in the art to combine the teachings of Jaffe and Farmer to arrive at the claimed invention.

Applicants respectfully traverse this rejection and submit that the Action has filed to establish a *prima facie* case of obviousness. Applicants submit that the Federal Circuit has held that when a rejection for obviousness depends on a combination of prior art references,

there must be some teaching, suggestion, or motivation to combine the references. See *In re Rouffet*, 149 F.3d 1350, 1355 (1998). The Federal Circuit has stated that such a requirement for some teaching or motivation to combine references is a "critical safeguard" against prohibitively using hindsight reconstruction in determining obviousness, and that without such motivation, "the more sophisticated scientific fields would rarely, if ever, experience a patentable technical advance." *Id.* at 1357. The Action has failed to point out any teaching, suggestion or motivation to combine the cited references, and thus has failed to establish a *prima facie* case of obviousness.

Nonetheless, solely to expedite prosecution, Applicants have amended the claims for clarification purposes only. Specifically, Applicants have amended the claims to recite wherein said bacteria and said nutrient are mixed and incubated prior to use. Support for the amendment may be found throughout the specification and claims as filed, specifically at lines 6-11, page 21 of the original specification. Accordingly, Applicants respectfully submit this rejection has been overcome.

Copending Claims

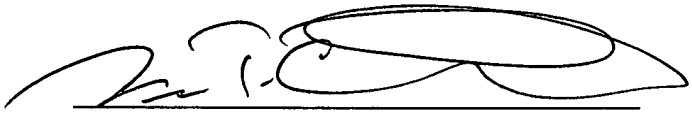
The Action requests, as it has previously, a list of all copending applications that set forth similar subject matter to the present claims, and to include such copy of claims with this Response. Applicants again submit at present, Applicants have no other copending U.S. patent applications related to the same subject matter as that of the instant application. Accordingly, Applicants submit this Response is fully responsive to the Action's request.

The Director is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 19-1090.

All of the claims remaining in the application are now clearly allowable. Favorable consideration and a Notice of Allowance are earnestly solicited.

Respectfully submitted,

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